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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re MIGUEL G.,

a Person Coming Under the Juvenile
Court Law.

B181244

(Los Angeles County
Super. Ct. No. FJ34068)

THE PEOPLE,

Plaintiff and Respondent,

v.

MIGUEL G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Millie Escobedo, Juvenile Court Referee. Modified and affirmed.

Patricia A. Andreoni, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, and Mary Sanchez and David A. Voet, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Miguel G. appeals from the order declaring him a ward of the juvenile court pursuant to Welfare and Institutions Code section 602 entered after the court determined that he committed three counts of second degree burglary (Pen. Code, § 459¹; counts 3, 6, 9), three counts of vandalism (§ 594, subd. (a); counts 4, 7, 10), three counts of vehicle tampering (Veh. Code, § 10852; counts 5, 8, 11) and one count of possession of burglary tools (§ 466; count 15).² The court declared counts 3, 6 and 9 to be felonies and counts 4, 5, 7, 8, 10, 11 and 15 to be misdemeanors. The court ordered defendant placed home on probation subject to various conditions and calculated his maximum term of confinement to be six years.

Defendant contends the court violated section 654 when calculating his maximum term of confinement. He also contends that probation condition 15, which precludes him from associating with persons disapproved of by his parent or probation officer, and condition 21, which prohibits him from using or possessing narcotics and requires him to stay away from places where drug users congregate, are constitutionally overbroad and must be modified to include a knowledge requirement. For the reasons set forth below, we strike the court's maximum term of confinement calculation and modify the probation conditions. In all other respects, we affirm the order.

BACKGROUND

In the early morning hours of November 13, 2005, Victor Garay heard noises outside his apartment in Los Angeles. He looked outside and saw two individuals break

¹ All further statutory references are to the Penal Code unless otherwise noted.

² Counts 1, 2, 13 and 14 were dismissed. Count 12 was neither sustained nor dismissed.

into two vehicles. He could not see their faces but could see their clothes. Garay called the police.

Los Angeles Police Officer Guillermo Calleros, along with his partner Officer Jurado, responded to the radio call regarding the vehicle burglaries. Near the intersection of 36th Street and San Pedro, Officer Calleros saw defendant and Francisco O., who matched the description of the burglary suspects. Defendant made eye contact with Officer Calleros, after which defendant threw some shiny objects onto a grassy area. Defendant and Francisco O. then walked away in different directions. The police detained them.

Officer Jurado recovered the items defendant had discarded. He found vice grips and a screwdriver, both of which could be used to burglarize cars. According to Officer Calleros, the vice grips could be used to break a window while the screwdriver could be used to punch an ignition. A pat down search of defendant yielded three car keys with the tips bent off. A similar search of Francisco O. revealed a screwdriver in his pants pocket.

An officer picked up Garay for a field identification. Garay could not recognize defendant's and Francisco O.'s faces but did recognize their clothing.

An examination of the vehicles in the surrounding area revealed a Ford Expedition with a broken window and glass inside, a Mazda with a broken window and glass inside, and a Toyota Corolla with a smashed window.³ Documents pertaining to the Toyota were found on the ground. Each vehicle had been in good condition the night before. Neither defendant nor Francisco O. had permission to break the windows of, or to enter or use, any of these vehicles.

Defendant presented an alibi defense.

³ Officer Calleros also observed a Blazer, Honda and Prizm that had been broken into. The counts pertaining to the Blazer and Honda were dismissed. (See fn. 2, *ante*.) No charges were alleged as to the Prizm.

DISCUSSION

Maximum Term of Confinement

As observed in *In re David H.* (2003) 106 Cal.App.4th 1131, “[w]hen a juvenile court sustains criminal violations resulting in an order of wardship (Welf. & Inst. Code, § 602), and removes a youth from the physical custody of his parent or custodian, it must specify the maximum confinement term, i.e., the maximum term of imprisonment an adult would receive for the same offense[s]. (Welf. & Inst. Code, § 726.)” (At p. 1133.) In this case, the minute order of the disposition hearing⁴ discloses that the juvenile court declared defendant a ward of the court pursuant to Welfare and Institutions Code section 602, ordered defendant removed from his parents, placed him in the care, custody and control of the probation officer, and ordered him placed home on probation in the home of his mother.

Inasmuch as the court’s order placing defendant home on probation in the home of his mother precludes a finding that the court actually removed defendant from the physical custody of his mother, the court was not required to calculate his maximum term of confinement. (*In re David H.*, *supra*, 106 Cal.App.4th at p. 1133.) It nevertheless did so.

The court calculated defendant’s six-year maximum term of confinement as follows: the principal term of three years on count 3 plus subordinate terms of four months on count 4, two months on count 5, eight months on count 6, four months on count 7, two months on count 8, eight months on count 9, four months on count 10, two months on count 11 and two months on count 15. By implication, the subordinate terms would run consecutively to the principal term.

Defendant contends the trial court violated section 654 by imposing sentences for burglary of a vehicle, vandalism and vehicle tampering and in so doing erroneously

⁴ The reporter’s transcript of the disposition hearing is not part of the record on appeal.

calculated his maximum term of confinement. We need not reach the merits of this contention. Inasmuch as the trial court was not required to calculate defendant's maximum confinement term in the first instance, we deem it appropriate simply to strike the court's calculation with the proviso that should the juvenile court in the future be required to calculate defendant's maximum term of confinement anew, it is to do so in conformity with section 654, if applicable (Welf. & Inst. Code, § 726, subd. (c)). (Compare *In re Danny H.* (2002) 104 Cal.App.4th 92, 106-107.)

Conditions of Probation

The court ordered defendant home on probation under specified conditions. Condition 15 directed defendant not to associate with anyone disapproved of by a parent or probation officer. Condition 21 ordered defendant "not to use or possess narcotics, controlled substances, poisons, or related paraphernalia" and to "stay away from places where users congregate."

Defendant contends these particular conditions are unconstitutionally overbroad and should be modified to include a knowledge requirement. The People, in turn, argue that in the absence of a reporter's transcript of the disposition hearing establishing that defendant interposed a constitutional objection to conditions 15 and 21 below, his contention must be deemed waived on appeal.⁵ We disagree.

While the failure to object to the reasonableness of a probation condition on *Bushman/Lent*⁶ grounds constitutes a waiver of the claim on appeal, no waiver will be

⁵ Whether a minor waives or forfeits a constitutional vagueness or overbreadth challenge to a probation condition by failing to object to that condition at the disposition hearing and whether a condition of probation precluding the minor from associating with any person disapproved of by a probation officer are issues currently pending before the California Supreme Court in *In re Sheena K.*, review granted June 9, 2004, S123980.

⁶ A condition of probation is unreasonable if it is unrelated to the defendant's crime, relates to conduct that is not criminal or does not serve the statutory objectives of probation. (*People v. Lent* (1975) 15 Cal.3d 481, 486 & fn. 1; *In re Bushman* (1970) 1 Cal.3d 767, 776-777, disapproved in part in *Lent*, *supra*, at p. 486, fn. 1.)

found when the challenge involves “pure questions of law that can be resolved without reference to the particular sentencing record developed in the trial court.” (*People v. Welch* (1993) 5 Cal.4th 228, 235; accord, *In re Justin S.* (2001) 93 Cal.App.4th 811, 813-815.) Inasmuch as defendant’s particular constitutional claims are strictly legal in nature and can be resolved without regard to the sentencing record, we conclude that his failure to establish that he objected to conditions 15 and 21 below does not foreclose him from challenging these conditions on appeal.

With regard to the merits of defendant’s claim that probation conditions 15 and 21 are constitutionally overbroad, the People concede and we agree that the claim has merit. To the extent condition 15 prohibits defendant from associating with individuals he does not know are disapproved of by a parent or probation officer, it is unconstitutionally overbroad. Similarly, to the extent condition 21 prohibits defendant from going to a place unbeknownst to him to be a place where narcotics users congregate, it is unconstitutionally overbroad. (Cf. *In re Justin S.*, *supra*, 93 Cal.App.4th at p. 816; *People v. Lopez* (1998) 66 Cal.App.4th 615, 628-629; *People v. Garcia* (1993) 19 Cal.App.4th 97, 102.) The appropriate remedy is modification of these conditions.

DISPOSITION

That portion of the disposition order stating that minor may not be held in physical confinement for a period to exceed six years, as well as the court’s calculation of defendant’s maximum term of confinement, is stricken.

Probation condition 15 is modified to read as follows: Do not associate with co-minor and anyone known to you to be disapproved of by your parents or probation officer. Condition 21 is modified to read as follows: Do not use or possess narcotics, controlled substances, poisons, or related paraphernalia; stay away from places known to you to be places where users congregate.

As modified, the order is affirmed. The juvenile court is directed to prepare an amended disposition order reflecting these modifications.

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SPENCER, P. J.

We concur:

VOGEL, J.

ROTHSCHILD, J.